

UNITED STATES DISTRICT COURT 978394  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CONSOLIDATED RAIL CORPORATION ) No. S90-00056  
a/k/a CONRAIL, )  
 )  
Defendant and )  
Third-Party Plaintiff, )  
 )  
vs. )  
 )  
PENN CENTRAL CORPORATION, et al., )  
Third-Party Defendants. )  
----- )

The deposition of GREGORY KIRK

Date: Wednesday, June 9, 1993

Time: 2:20 o'clock p.m.

Place: 205 West Jefferson Boulevard  
South Bend, Indiana

Called as a witness by the Plaintiff  
in accordance with the Federal Rules of Civil  
Procedure, pursuant to agreement as to date,  
time and place and notice duly served.

Before Teresa L. Hughes  
Notary Public, State of Indiana

1 MR. PETER E. JAFFE, ESQ.  
2 Environmental Enforcement Section  
3 Environment and Natural Resources Division  
4 United States Department of Justice  
5 P.O. Box 7611 Ben Franklin Station  
6 Washington, D.C. 20044

7 and

8 MR. STEVEN C. MASON, ESQ.  
9 Assistant Regional Counsel  
10 U. S. Environmental Protection Agency  
11 Office of Regional Counsel, CS-3T  
12 77 West Jackson Boulevard  
13 Chicago, IL 60604

14 For the Plaintiff;

15 MR. JAMES A. ERMILIO, ESQ.  
16 Bingham, Dana & Gould  
17 Suite 1200  
18 1550 M. Street, N.W.  
19 Washington, D.C. 20005

20 For the Defendant and Third Party Plaintiff;

21 MR. PIERCE E. CUNNINGHAM, ESQ.  
22 Frost & Jacobs  
23 2500 Central Trust Center  
24 201 East Fifth Street  
25 Cincinnati, OH 45202

For the Third Party Defendant.

Also Present: Daneice Dillard  
Intern Reporter

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## I N D E X

## THE DEPOSITION OF

GREGORY KIRK

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## PLAINTIFF'S EXHIBIT NO.

## MARKED

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Elkhart Yard.....Page 23

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1 GREGORY KIRK,  
2 called as a witness by the Plaintiff, being  
3 first duly sworn, was examined and testified  
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. JAFFE:

7 Q Would you please state your name for the record?

8 A Gregory Kirk.

9 Q Your address please?

10 A [REDACTED] (b) (6)

11 Q And a telephone number where you can be reached  
12 during the day?

13 A [REDACTED] (b) (6)

14 Q [REDACTED] (b) (6)

15 A Yes.

16 Q Good afternoon. My name is Peter Jaffe. I'm with  
17 the Department of Justice from Washington, and I am  
18 here representing the United States in litigation  
19 that's ongoing between the United States and  
20 Conrail relating to the Elkhart Rail Yard.

21 The purpose of this deposition is to find out  
22 more information about what happened at the Elkhart  
23 Rail Yard during your tenure, and I'm going to ask  
24 you a series of questions, and I'd appreciate if  
25 you could be straightforward and honest in the

1 answers as you can. All right?

2 A Uh huh.

3 Q It's most important that you answer audibly yes or  
4 no --

5 A Yes.

6 Q (Continuing) -- because we're taking --

7 A Yes.

8 Q All right. The other thing is that you let me  
9 complete my questions before you answer. Okay?

10 A Yes, yes.

11 Q Thank you.

12 Also, if at any time I ask you a question  
13 that you don't understand or that you can't hear or  
14 for any other reason you'd like me to repeat it,  
15 will you ask me to do so please?

16 A Yes.

17 Q Thank you.

18 And finally -- well, let me ask you -- are  
19 you represented by counsel at this deposition?

20 A I didn't pay anybody.

21 Q All right.

22 MR. JAFFE: Mr. Ermilio, are you  
23 representing him?

24 MR. ERMILIO: Yes, I'm representing  
25 Mr. Kirk -- Conrail. He's an employee of

Conrail.

Q (Continuing) Mr. Kirk, at certain points in the deposition I may ask questions that your attorney may have objections to; but pursuant to whatever his instructions are, you may go ahead and answer them regardless of his objections unless he instructs you not to do so. All right?

A Yes.

Q In preparation for this deposition did you review any documents?

A No.

Q Have you made any personal notes or memoranda in preparation for this deposition?

A No, not for this deposition.

Q For what other purpose?

A I keep a date book of when somebody calls me over the phone or when I meet somebody.

Q Have you met with anybody in preparation for this deposition?

A I met with Jim Ermilio last night.

Q Other than your meeting with Mr. Ermilio last night, did you meet with anyone else at any time prior to that meeting with Mr. Ermilio?

A Not in preparation for this.

Q Let me begin by just getting to know you a little

1 better.

2 Have you graduated from high school?

3 A Yes.

4 Q In what year?

5 A 1972.

6 Q And what high school was that?

7 A Mishawaka High School.

8 Q Is that here in the South Bend, Elkhart area?

9 A Mishawaka area.

10 Q Mishawaka.

11 What did you do following your graduation  
12 from high school in 1972?

13 A Opposed to what?

14 Q What was your occupation after you --

15 A Oh, my occupation?

16 Q (Continuing) -- after you finished high school?

17 A I worked at a car dealership in Mishawaka.

18 Q And approximately how long did you work there?

19 A A year.

20 Q What did you do following that year at the car  
21 dealership?

22 A I went to work for Penn Central Corporation.

23 Q What was your first job for Penn Central  
24 Corporation?

25 A Car repair man.

1 Q And car repair man is a standard title for people  
2 who work --

3 A Yeah, car man, car repair man; they're all referred  
4 to as the same thing.

5 Q At what facility did you work as a car repair man?

6 A Elkhart Yard. It was known as Robert Young Yard at  
7 the time.

8 Q What were the general duties of car repair men as  
9 you performed them?

10 A Repair and inspect freight cars.

11 Q Did you inspect freight cars coming into or leaving  
12 the Robert Young Rail Yard?

13 A If you held that position.

14 Q Was that the position that you held?

15 A I was a car repair man.

16 Q Did you personally inspect cars that came into and  
17 left the Elkhart -- Robert Young Rail Yard?

18 A During my 20 years I have.

19 Q I'm not trying to trick you. I'm just asking some  
20 straightforward questions.

21 A I'm -- I'm giving you straight answers.

22 MR. ERMILIO: You're -- you're confusing  
23 me as well. I'm not sure what you're -- what  
24 you're asking.

25 A (Continuing) There is also positions -- we bid



1 positions for jobs. I chose car repair man at the  
2 repair track. But about ten years down the road, I  
3 did bid car inspector positions, and I have held  
4 car inspector positions.

5 Q Your first position with Penn Central at the Robert  
6 Young Rail Yard was car repair man, right?

7 A Yeah, car repair man.

8 Q What are the duties of a car repair man?

9 A Repair freight cars.

10 Q All right. I misunderstood you. I thought that  
11 you said inspection was part of it.

12 A Well, if you find something else wrong with the car  
13 that the foreman might have missed, we fix that  
14 too.

15 Q Approximately how long were you a car repair man?

16 A I still am. I've only held car inspector positions  
17 in my 20 years maybe six months of the total time.

18 Q With the exception of that six months, you were a  
19 car repair man the remainder of the time?

20 A In different ways, yeah.

21 Q What do you mean by "different ways"?

22 A I worked the repair track. I then worked what they  
23 called a speed rip on Track 7, and I'm -- I have  
24 worked the cleaning track. It's called the  
25 clean-out track, and I'm presently what they call a

1 high rail.

2 Q High rail?

3 A High rail.

4 Q And other than these positions, the only other  
5 position you have held is car inspector?

6 A Yes.

7 Q And when did you hold the position of car  
8 inspector?

9 A I can't tell you exact dates.

10 Q Can you tell me an approximate date?

11 A No.

12 Q Was there one particular time that you were a car  
13 inspector, or was it -- were there several times  
14 throughout your tenure?

15 A On two different occasions I had bid different car  
16 inspector jobs.

17 Q What are the differences between the duties of a  
18 car repair man as that job is performed at the  
19 repair track as opposed to the speed rip and as  
20 opposed to the other places that you have worked?

21 A The speed rip was for -- we had what they called a  
22 tug vehicle with a rotor and torch and parts, and  
23 it was light repairs that could be made on the cars  
24 and then sent back out into the train, just try to  
25 expedite freight a little faster. More -- more

1                   serious repairs went to the repair track.

2           Q       I see.

3                   Light repairs might include what type of  
4                   examples?

5           A       Hand holds, water in the journal boxes, defective  
6                   air on the car, defective doors, adjusting loads,  
7                   almost anything that they could do on the repair  
8                   track, but besides we -- we very seldom jacked cars  
9                   up and changed truck components or anything like  
10                  that.

11          Q       Did you clean journal boxes?

12          A       Are you talking about Track 7?

13          Q       I'm talking about --

14          A       Anytime?

15          Q       Well, initially I'm talking about the speed rip?

16          A       The speed rip, that was just if there was water in  
17                   the box, we just took the suction type gun and took  
18                   the water out and then fill it with oil.

19          Q       Did you clean journal boxes on other departments?

20          A       As car repair man on the repair track.

21          Q       What did you use to clean the journal boxes with?

22          A       If we used any type of thing, the only liquid I  
23                   remember using to clean them was what they called  
24                   ACI cleaner.

25          Q       Is that a brand name?

1 A It was a -- a type of label that they had put on  
2 boxcars, and this was used to wipe that label clean  
3 so that a camera or something could pick it up.  
4 But the cleaner, I really don't know what it is.

5 Q Do you know what type of container it came in?

6 A The only container I ever seen it in was a plastic  
7 jug.

8 Q Do you remember the color of this plastic jug?

9 A Clear.

10 Q Was the ACI clear as well?

11 A No, it was yellow.

12 Q Was it a bright yellow or a dull yellow?

13 A A dull.

14 Q Is there any other chemical or other substance that  
15 it looked like, maybe a household cleaner that you  
16 would have or?

17 A Not that I know of.

18 Q Do you know what the label on the bottle looked  
19 like?

20 A It was put on with masking tape, and somebody wrote  
21 with magic marker "ACI cleaner."

22 Q There was no --

23 A I don't know --

24 Q (Continuing) -- commercial label on it?

25 A I don't know where the product was obtained.

1 Q ACI was used throughout the period of your working  
2 at Elkhart?

3 A It was -- when I hired on, ACI labels were on their  
4 way out. And so when we ran out of that particular  
5 cleaner, we just -- we didn't use -- the only thing  
6 we used after that that I can remember is mineral  
7 spirits.

8 Q Approximately what year was it that ACI was phased  
9 out?

10 A It was directly after I hired in. The last time I  
11 probably would have used it would probably have  
12 been maybe '74.

13 Q Do you know how the jugs of ACI were disposed of?

14 A No.

15 Q Were the rags that were used to apply the ACI  
16 cleaned or thrown away?

17 A I would assume they were thrown away.

18 Q Do you know how they were thrown away or where?

19 A No.

20 Q Did you ever use solvents to clean the journal  
21 boxes?

22 A Not that I remember.

23 Q All right. What were the duties of a car repair  
24 man at the cleaning track?

25 A Cleaning cars out that were destined to be loaded

1 with cereal. The shippers would leave their  
2 dunnage in the cars, and we would clean these out.

3 Q What do you mean, "loaded with cereal"?

4 A They were Kellogg's cars.

5 Q Oh, I see.

6 A Post Toasties.

7 Q So you were -- you were a specialist in Kellogg's  
8 cars?

9 A No, it -- whatever car was there, you know, it  
10 wouldn't have to be Kellogg's car. They might have  
11 just contracted to use it. We just cleaned the  
12 dunnage out for them.

13 Q And what are the duties of a high railer?

14 A I am a mobile repair truck, and I have many duties.

15 Q Do you perform these duties exclusively at the  
16 Robert R. Young Rail Yard?

17 A No.

18 Q You go out on the track outside the rail yard as  
19 well?

20 A I go on the highway to the track.

21 Q By "the highway," you mean surface roads?

22 A Yes, I use the highway. The truck doesn't go on  
23 the rail anymore.

24 Q Are you responsible for keeping any records at the  
25 Elkhart Yard?

1 A When I was a car inspector it was my responsibility  
2 to keep what they call a CRB-8.

3 Q What is a CRB-8?

4 A Personal record of repairs.

5 Q What types of items would be recorded on a CRB-8?

6 A Air hoses, brake shoes, brake shoe keys, cotter  
7 pins, knuckle pins.

8 Q You mean the -- the repairs to these items?

9 A There -- there's a code you go by, and you use a  
10 number, plus your start and stop numbers for  
11 where -- once you inspected that part of the train.

12 Q I realize you're trying to keep your answers short,  
13 but I'd appreciate if you'd --

14 MR. ERMILIO: Objection.

15 MR. JAFFE: There is no objection to  
16 statements.

17 MR. ERMILIO: There is an objection.

18 MR. JAFFE: What are the grounds of your  
19 objection.

20 MR. ERMILIO: That you're making these  
21 statements mischaracterizing his -- his  
22 answers, and that could possibly lead to  
23 implications later.

24 MR. JAFFE: Is there a civil procedure  
25 upon which you are objecting?

1 MR. ERMILIO: Yes.

2 MR. JAFFE: Okay, please state it.

3 MR. ERMILIO: The objection is your  
4 question is, I would think, could be  
5 harassment; and it is definitely misleading,  
6 and it is mischaracterizing his answers. He  
7 has given no indication that he's trying to  
8 keep his answers short. I feel that's  
9 inappropriate, so I'm objecting.

10 If you don't feel there's an objection  
11 to it, that's fine, but my objection is on  
12 the record.

13 MR. JAFFE: All right.

14 MR. CUNNINGHAM: I would like to add  
15 this just as a comment. There's an inference  
16 that some additional answer is required.

17 MR. JAFFE: I haven't finished my  
18 statement.

19 MR. ERMILIO: Or appropriate.

20 MR. CUNNINGHAM: So far I haven't seen  
21 that as needed from this witness, but that's  
22 just a comment.

23 MR. JAFFE: And I appreciate it.

24 BY MR. JAFFE:

25 Q It's difficult to understand your answers -- your



1 previous answer when you say that this CRB-8 form  
2 recorded the items that you stated.

3 My question is what did it record about those  
4 items?

5 A When you're a car inspector, it is your personal  
6 record of what you did in your tour of duty. It  
7 gives the train you worked, the track, the time,  
8 the number of cars and your start number, which  
9 would be the car you started at, and your stop  
10 number, which would be the car you started at or  
11 stopped at. That is your section.

12 And on the back of this form is where you  
13 make your record of repairs.

14 Q So you would record repairs to various items on  
15 each of the cars that you made that you would have  
16 performed?

17 A If you performed a repair on it, you -- you take  
18 the car number, and you use the codes to record it  
19 so that the company that is getting the items can  
20 be billed.

21 Q I see.

22 Would this CRB-8 record leaks that might have  
23 been found in the car?

24 A No.

25 Q Are you presently employed at the Elkhart Rail

1 Yard?

2 A Yes.

3 Q And your present position is high railer?

4 A Yes.

5 Q Where is the label on the journal box?

6 A There is no label on the journal box.

7 Q Did you -- did you previously say that the ACI was  
8 used to clean the labels of the journal boxes?

9 A No.

10 Q I'm sorry.

11 What was the ACI used for?

12 A To clean the box, itself, of contaminants.

13 Q I see.

14 What -- what -- do you know what types of  
15 contaminants it was used for?

16 A Dust, dirt, grease; anything that could foul the --  
17 the brass and the axles and cause a problem.

18 Q And this was applied with a rag?

19 A Yes.

20 Q Was this hosed off when it was -- after it was  
21 applied?

22 A No.

23 Q Was it just left alone?

24 A Wiped with a rag.

25 Q Was any protective gear used when you applied the

1 ACI?

2 A Gloves.

3 Q Rubber gloves?

4 A I didn't choose to use them.

5 Q I'm sorry. Are you saying that it was Conrail  
6 policy to use the gloves?

7 A No.

8 Q Gloves may have been worn by choice?

9 A Some people wore rubber gloves to keep their hands  
10 from getting oily because there's a lot of oil in a  
11 journal box so.

12 Q I see.

13 So it's not necessarily to protect yourself  
14 from the ACI?

15 A No.

16 Q It's just used to keep yourself clean?

17 A Yes.

18 Q Did you ever notice any adverse reactions from the  
19 ACI?

20 A No.

21 Q Are you familiar with a -- a tank car spill in the  
22 mid 1960's?

23 A Just by hearsay.

24 Q What do you mean "by hearsay"?

25 A Older railroaders talking about it.

1 Q What did they say?

2 A That a tank car had derailed and they picked it up  
3 and it busted in two.

4 Q Do you know why it busted in two?

5 A Just why it was told to me.

6 Q And what was told to you about why it busted in  
7 two?

8 A It was a new type of tank, and they had not been  
9 schooled in lifting it properly.

10 Q I'm sorry. What was the word you used there?

11 A Schooled.

12 Q What does that mean, "schooled"?

13 A May not have been taught how to lift it right.

14 Q Oh, I see.

15 You mean the people who were lifting?

16 A Yeah.

17 Q I see.

18 And do you know how they lifted it wrong?

19 A I was told they lifted it with a coupler hitch.

20 Q And why did that cause the tank car to bust in two?

21 A I was told because it did not have a center channel  
22 that extended the whole length of the car.

23 Q What was the purpose of the center channel?

24 A It's the main structure that holds the car body up.

25 Q This created more stability in the car?

1 A It was a new type of car that they had designed, I  
2 was told, and it just had center channels at each  
3 end to hold the draft assembly in arrangement.

4 Q Is this new type of car still in use today?

5 A Yeah, there's several tank cars without center  
6 channels.

7 Q Do you know what the tank car contained?

8 A No.

9 Q Were you ever told what the tank car contained?

10 A No.

11 Q Do you know what the result of the tank car busting  
12 open was?

13 A No.

14 Q Do you know if it was a full tank car? An empty  
15 tank car?

16 A No.

17 Q Did you -- have you heard one way or the other  
18 whether it was a full or empty tank car?

19 A No.

20 Q And in what context were you told about this?

21 A Just talk. Just small talk.

22 Q Was it particularly important to the people that  
23 you were talking to?

24 A I have no idea.

25 Q I mean, did they remember it as a -- as a big or

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1                   1 please.

2                   (Plaintiff's Deposition Exhibit No. 1  
3                   marked for identification.)

4           BY MR. JAFFE:

5           Q       Mr. Kirk, let me show you what's been marked as  
6                   Kirk Exhibit 1. Is this a map of the Robert R.  
7                   Young Rail Yard?

8           A       It's a poor map.

9           Q       But is it a map?

10          A       It looks similar.

11          Q       Can you mark with an "X" on this map approximately  
12                   where you heard the spill to take place?

13                   MR. CUNNINGHAM: What was the question?  
14                   Where he heard?

15                   MR. JAFFE: I'm sorry. I apologize.  
16                   Let me rephrase it.

17          Q       (Continuing) You were told that the spill took  
18                   place somewhere in the yard.

19                   Can you please indicate that, the place at  
20                   which the spill allegedly occurred, with an "X."

21                   Can you -- it's hard to see that "X" on  
22                   the -- you are marking that just to the right of  
23                   No. 10 on the map. Is that correct?

24          A       Yes, it would have been in the track area of  
25                   No. 10.

1 Q Who is it that told you about the tank car busting  
2 open at this location?

3 A I don't know.

4 Q Was it another employee?

5 A Yes.

6 Q All right. Were you involved in the repair of any  
7 tank cars which contained carbon tetrachloride?

8 A I would have no idea.

9 Q You would have no idea at the time, or you just  
10 don't recall?

11 A I wouldn't know what was in a car.

12 Q Were there placards on the outside of the cars  
13 indicating the contents?

14 A Yes.

15 Q Did you not pay any attention to those for purposes  
16 of your job?

17 A Usually not.

18 Q Did it make any difference to your repairs whether  
19 there was flammable or nonflammable contents?

20 A Yes.

21 Q In what way would it make a difference?

22 A You wouldn't want to use a torch close to the car  
23 body if it was flammable.

24 Q So how would you determine whether the contents  
25 were flammable or not?



1 A Placards.

2 Q So it was -- did you check the placards each time  
3 you --

4 A No.

5 Q How would you know whether to check a placard or  
6 not?

7 A If I was going to use a torch.

8 Q I see.

9 Do you know if you ever repaired any tank  
10 cars which contained carbon tetrachloride?

11 A I have no idea.

12 Q Do you know whether there are any tank cars buried  
13 at the Robert R. Young Rail Yard?

14 A Yes.

15 Q What buried tank cars do you know about?

16 A They're located northwest of the B & B Shop.

17 Q All right. Using Exhibit No. 1 again, I'd  
18 appreciate it if you could put an "A" outside in  
19 the margin with an arrow pointing to the position  
20 on the map at which the buried tank cars are  
21 located.

22 All right. That is a just northwest of what  
23 is No. 7?

24 A Yes.

25 Q Is that correct?

1 A Yes.

2 Q Okay.

3 How many tank cars are buried in this  
4 position?

5 A I saw two.

6 Q When did you see them?

7 A Probably 1974.

8 Q Have you seen them since?

9 A Yes.

10 Q When was that?

11 A Monday night.

12 Q Just this past Monday night?

13 A Yes.

14 Q Why did you see them Monday night?

15 A I drove by it.

16 Q For the purpose of viewing the tank cars?

17 A No, in my duties.

18 Q I see.

19 Do you drive by these tank cars regularly?

20 A Yes.

21 Q So they protrude from the ground?

22 A Just one now.

23 Q Why does the other one not protrude from the ground  
24 now?

25 A I don't know. They covered it with a parking lot

1 of the B & B.

2 Q When was that parking lot built?

3 A I can't give you an exact year.

4 Q Was it built in the 1980's?

5 A Yes.

6 Q So it was built during Conrail's --

7 A Yes.

8 Q (Continuing) -- tenure?

9 Do you know if the tank car underwent -- over  
10 which the parking lot was built was moved?

11 A No.

12 Q No, you don't know; or no, it was not moved?

13 A I don't know.

14 Q Do you know if there's a particular person who  
15 would know the answer to that question?

16 A No.

17 Q Do you know why the tank cars were buried?

18 A Just hearsay.

19 Q What is the substance of that hearsay?

20 A They were gonna' be used as storm shelters.

21 Q Storm shelters?

22 A Yes.

23 Q For what purpose?

24 A Get out of a storm, I assume, is what he meant.

25 Q Who's he?

1 A Mel Johnson.

2 Q Is Mel Johnson still employed at the Elkhart Yard?

3 A No.

4 Q Do you know where Mel Johnson is now?

5 A No.

6 Q Do you know if Mel Johnson is still employed by  
7 Conrail?

8 A I don't think so.

9 Q When was the last time Mel Johnson was employed at  
10 the Elkhart Yard?

11 A Sometime in the 80's maybe, early 80's.

12 Q I take it from your answer that these tank cars, at  
13 least at the time that they were buried, were  
14 somehow accessible from the surface?

15 A Both of them were when he showed them to me.

16 Q Do you know if they were empty or full at the time  
17 that he showed them to you?

18 A One had no door on the top, and it was full of a  
19 liquid. Not full, but the bottom of it had liquid  
20 from the best I could judge overhead.

21 Q Do you know what the liquid was?

22 A No.

23 Q Do you know what these tank cars contained before  
24 they were buried?

25 A No.

1 Q Do you know anybody who would know the answer to  
2 that question?

3 A No.

4 Q Do you know if Mel Johnson would know the answer to  
5 that question?

6 A I don't know if he would or not.

7 Q What was Mel Johnson's position?

8 A Supervisor.

9 Q Of what?

10 A The repair track, second shift.

11 Q Do you know if Mel Johnson was involved in the  
12 burial of those cars?

13 A I have no idea.

14 Q Were those cars ever used as storm shelters?

15 A Not that I know of.

16 Q Were they ever used for any other purpose?

17 A I don't know anybody that would crawl in them.

18 Q Do you know the color of these tank cars?

19 A Yes.

20 Q What colors were the tank cars?

21 A One black, one white.

22 Q Is there any significance from a black tank car?

23 A Through my career white usually indicated something  
24 more dangerous.

25 Q By "more dangerous," you mean a hazardous

1 substance?

2 A Yes.

3 Q Did you ever see the placards attached to these  
4 cars?

5 A They're not visible.

6 Q By "not visible," you mean they were buried?

7 A They were buried.

8 Q Do you know if either or both of these tank cars  
9 were involved in accidents?

10 A I have no idea.

11 Q Are you aware of any disposal of drums from the car  
12 shop area spilled onto the surface of the ground at  
13 the Elkhart Yard?

14 A Could you say that again?

15 Q Are you aware of the disposal of any drums of  
16 liquids by their contents being spilled onto the  
17 ground at the Elkhart Yard?

18 A Not onto the ground.

19 Q Are you aware of such a disposal in some other way?

20 A Into a drain. If he -- if he was disposing of  
21 them, he poured them into a drain.

22 Q By "he," you mean who?

23 A It was a storehouse employee.

24 Q This is a particular individual?

25 A I don't remember who it was.

1 Q When did this disposal occur?

2 A I can't give you an exact year.

3 Q Do you remember who you were working for at the  
4 time they reported it? Who was your supervisor?

5 A No.

6 Q Do you know if this was in the 1980's?

7 A I don't think so.

8 Q You think it was before or after the 1980's?

9 A Before.

10 Q Do you think it was before or after 1976?

11 A I don't know.

12 Q Are you aware of a -- of an open area to the east  
13 of the car shop or near the car shop where Conrail  
14 employees disposed of the contents of 55 gallon  
15 drums?

16 A No.

17 Q Did you tell government employees that contents of  
18 numerous 55 gallon drums were disposed of to the  
19 east of the car shop area?

20 A No.

21 Q Do you remember meeting with -- with employees of  
22 State of Indiana on February 13th, 1992, at the  
23 Elkhart Yard?

24 A Yes.

25 Q What did you talk to those -- that employee about?

1 A I took them on a tour of the yard.

2 Q And what was the purpose of this tour?

3 A Show them the tank cars.

4 Q Anything else?

5 A And they wanted my opinions on polluted areas.

6 Q What specific opinions did they want?

7 A Areas where they thought maybe something could have  
8 concentrated.

9 Q And what was your opinion of where things might  
10 have concentrated?

11 A The tank car areas, the storehouse area, the drain  
12 in front of the car shop, the Elkhart rubber plant,  
13 the old Elkhart rubber plant, the old New York  
14 Central Power Plant; and I showed them where they  
15 dumped oil.

16 Q Why did you suspect the storehouse?

17 A Because that's where they stored the barrels.

18 Q Had they stored barrels in this particular  
19 storehouse that you indicated throughout the time  
20 that you've worked at the Elkhart Yard?

21 A Oh, yes.

22 Q Do you know if they've just stored hazardous  
23 substances there?

24 A I have no idea.

25 Q And why did you indicate the drain?



1 A That's where I seen an employee dump a barrel.

2 Q Did you see this just once, or was this something  
3 that you saw several times?

4 A Just once.

5 Q I'm sorry if I asked you this before, but did you  
6 indicate when you saw that happen?

7 A I told him I don't know. I didn't know. I don't  
8 remember.

9 Q Can you remember approximately when it was? Early  
10 in your tenure or late?

11 A Before the 80's.

12 Q Do you know what it was that he poured down the  
13 drain?

14 A No.

15 Q Do you know what the barrel looked like?

16 A No.

17 Q Do you know if it was brightly colored or black?  
18 White?

19 A I don't remember.

20 Q And you don't remember who the employee was?

21 A No.

22 Q And why did you indicate the Elkhart rubber plant?

23 A Just because it was an old -- old factory, and I  
24 would assume they used chemicals for years.

25 Q So you had no personal knowledge?

1 A No.

2 Q Just a supposition?

3 A No, just an opinion.

4 Q And why did you indicate the New York Central Power  
5 Plant?

6 A It was catacombed with tunnels.

7 Q Do you know where those tunnels led or lead?

8 A I've been told to the downtown area of Elkhart.

9 Q Do you know what the purpose of these tunnels was?

10 A Steam fittings.

11 Q I don't understand what you mean?

12 A My understanding is the piping ran -- some steam  
13 piping ran through the tunnels.

14 Q It was to release steam?

15 A I have no idea why -- why they buried it or why it  
16 was in a tunnel, no.

17 Q When Conrail took over the yard in 1976, did any --  
18 were any changes instituted specifically -- excuse  
19 me -- specifically as to the handling of hazardous  
20 substances?

21 A No.

22 Q When Conrail took over the yard, were any barrels  
23 of material disposed of which had not been disposed  
24 of under Penn Central?

25 A They had money and started cleaning up the place.

1 Q How did they clean it up?

2 A New rail, removed dunnage. The storehouse area was  
3 completely refurbished.

4 Q In refurbishing this storehouse area, did employees  
5 at the yard dispose of out-of-date materials or  
6 other materials which were no longer used by the  
7 rail yard?

8 A I don't know how they got rid of it or where they  
9 put it.

10 Q Are you familiar with the practice of cleaning  
11 tracks around the Elkhart Yard?

12 A In what way?

13 Q Were -- were tracks cleaned around the Elkhart  
14 Yard?

15 A With machinery or?

16 Q With chemicals?

17 A Tracks?

18 Q Yes, track.

19 A Steel rail?

20 Q Yes.

21 A Not that I know of.

22 Q Was the area around the car shop cleaned?

23 A The cement floor.

24 Q How was that cleaned?

25 A With some type of cleaner.

1 Q Do you know what type of cleaner that was?

2 A No.

3 Q Can you describe for me, please, the process of  
4 using that cleaner to --

5 A Everything was taken off the floor that was on the  
6 floor and used a forklift with this pipe that we  
7 had manufactured ourselves with holes in it, and  
8 you drove along with the pipe -- the barrel tilted  
9 up and let the fluid saturate the floor.

10 Q And then was that hosed off or?

11 A Fire hose, yeah.

12 Q Was any protective gear used during that operation?

13 A No.

14 Q Are you aware of the chemicals used in that  
15 operation?

16 A No.

17 Q Were the tracks in that area ever removed for  
18 cleaning?

19 A The tracks were imbedded in the floor. It would be  
20 impossible unless you were going to put in a new  
21 floor.

22 Q Were the switches in the tracks ever cleaned with  
23 degreasers?

24 A I have no idea.

25 Q Was it your responsibility to clean the -- the car

1 repair area -- car shop area?

2 A Everybody that had a job there. It was everybody's  
3 responsibility the day they decided to do it.

4 Q Did you see how the solvent was stored?

5 MR. ERMILIO: Objection. I think you're  
6 mischaracterizing his prior testimony.

7 MR. JAFFE: In what way?

8 MR. ERMILIO: He didn't use the word  
9 "solvent."

10 MR. JAFFE: Okay.

11 Q (Continuing) Did you see how the chemicals used in  
12 this process were stored?

13 MR. ERMILIO: Objection. He never used  
14 the word "chemical" either. I think he used  
15 the word "cleaner."

16 I don't want to put words in his mouth  
17 either, but I think he did, unless you want  
18 to go back and look.

19 MR. JAFFE: No, I apologize.

20 Q (Continuing) Did you see how the cleaner was  
21 stored?

22 A Yes.

23 Q And how was it stored?

24 A On skids.

25 Q Do you remember the container in which it was

1 stored?

2 A 55 gallon drum.

3 Q Do you remember the name of the cleaner?

4 A No.

5 Q Do you remember the color of the 55 gallon drums?

6 A At one time they seemed to be orange, and then as  
7 years went by they were stored in blue.

8 Q Do you know approximately when the color change  
9 occurred?

10 A No.

11 Q Was it in the 80's?

12 A I don't know.

13 Q Do you remember any labels on the 55 gallon drums?

14 A Corrosive.

15 Q That was a warning label?

16 A Small placard.

17 Q Were there any other labels that you remember on  
18 the drums?

19 A No.

20 MR. JAFFE: I don't think I have any  
21 further questions at this time.

22 MR. CUNNINGHAM: Jim?

23 Can we just take about two minutes?

24 MR. ERMILIO: Sure.

25 MR. CUNNINGHAM: Maybe less.

(Whereupon a short recess was taken.)

CROSS EXAMINATION

BY MR. ERMILIO:

Q Mr. Kirk, I'm going to ask you a few questions about what you've talked about today.

Regarding the buried tank cars that you were discussing, one of them you said was in an area that is now covered by a parking lot?

A Yes.

Q Do you know whether that tank car was removed before the parking lot was constructed?

A I don't know.

Q Okay. Mr. Jaffe asked you about a meeting you had with the State of Indiana employees on February 13th, 1992. Do you remember -- do you remember that meeting?

A Yes.

Q Do you remember who was there?

A Two gentlemen and one woman.

Q Do you know their names?

A Just the woman.

Q What was the woman's name?

A Her first name was Bridget.

Q And do you know where she was from? Who she worked for? I'm sorry.

1 A She worked for the EPA.

2 Q The Federal U. S. EPA?

3 A I think so.

4 Q And the two men, you don't know their names?

5 A No.

6 Q Do you know who they worked for?

7 A One of them was associated with the Indiana  
8 Department of Environment.

9 Q Okay. And the other?

10 A I don't know. He seemed to be new.

11 Q Okay. So you don't know who he worked with?

12 A No, I don't know.

13 Q Okay. You mentioned that the purpose was to -- to  
14 show them the tank cars?

15 A Yes.

16 Q You're talking about the buried tank cars?

17 A Yes.

18 Q The two that you had discussed earlier?

19 A Yes.

20 Q You also showed them other areas.

21 Did you show them the drain by the car shop  
22 that you mentioned?

23 A Bridget seemed to be aware of it.

24 Q So you didn't show it to her?

25 A We drove just west of it.



1 Q Okay. You said you once on one occasion saw an  
2 employee emptying the contents of a barrel into  
3 that drain. Did you tell Bridget that?

4 A Yes.

5 Q Did you tell the other two gentlemen that?

6 A Yes, I think they were all present.

7 Q Did you tell them how many barrels this employee  
8 emptied down the drain?

9 A No.

10 Q Did you give them a -- an estimate?

11 A I don't think so.

12 Q Did you ever say that there were 100 or  
13 approximately 100 barrels dumped down that drain?

14 A No.

15 Q Did you ever say that the contents of the drums  
16 were poured on the ground?

17 A No.

18 Q I'm talking about when I asked, "Did you ever say?"  
19 I'm referring to that -- that meeting with Bridget  
20 and the other two gentlemen.

21 Did you ever say that contents of  
22 approximately 100 or so barrels were emptied onto  
23 the ground?

24 A No.

25 Q At the rail yard?

1 A No.

2 Q Do you know whether the drum that you saw being  
3 emptied down that drain, do you know whether that  
4 drum was open, whether the top was open?

5 A I don't remember.

6 Q Did you see contents pouring out? Contents of the  
7 drum as opposed to some liquid that may have been  
8 resting on top of the drum?

9 A I paid no attention to what he was -- I just know  
10 he had a barrel tipped up, and it was going down  
11 that drain.

12 Q Did you ever talk to Bridget again? I should say  
13 either before or after that meeting?

14 A I don't think I talked to her since.

15 Q Any other occasion that you met with her or talked  
16 to her?

17 A No. I seen her in the yard while they were doing  
18 their job or whatever it was they were doing.

19 Q Okay. Did you ever have a conversation with any  
20 other representative of the government?

21 A Yes.

22 Q Regarding the Elkhart Yard?

23 A Yes.

24 Q Can you tell me when that conversation was?

25 A I went to several public meetings.

1 Q Okay.

2 A And spoke to a gentleman named Dennis Dalga.

3 Q Okay. What did you speak about?

4 A I -- I -- we discussed -- well, it was a general  
5 discussion among everybody there; and if you had  
6 questions, you could ask questions.

7 Q Were there other citizens of --

8 A Yeah.

9 Q (Continuing) -- from the area there?

10 A Yes.

11 Q Were there employees from the yard there?

12 A I don't remember seeing any.

13 Q What did you ask Mr. Dalga; do you remember?

14 A I discussed with him the two tank cars that were  
15 there.

16 Q Did you discuss this in the open forum --

17 A Yes.

18 Q (Continuing) -- so everyone else could hear this,  
19 or was it a private discussion?

20 A It was after when people were having refreshments,  
21 and they had a map of the area, and I just showed  
22 him approximately where they were.

23 Q Did you discuss anything else with him?

24 A Just what they were gonna' do.

25 Q "They" meaning?

1 A What the EPA's plans were to clean this mess up.

2 Q Did you discuss all of the items that you had  
3 discussed with Bridget and the two gentlemen on  
4 February 13th of '92?

5 You listed a number of things that you  
6 discussed with Bridget; the tank car area, the old  
7 Elkhart rubber plant, old New York Central Power  
8 Plant and others. Did you discuss all of those  
9 with Dennis Dalga?

10 A No.

11 Q Did you ever tell Mr. Dalga that the contents of  
12 drums were disposed of at the rail yard?

13 A No.

14 Q Did you discuss that matter at all with Mr. Dalga?

15 A No.

16 Q Did you discuss the one occasion that you witnessed  
17 an employee tipping -- tipping over a barrel over  
18 the drain by the car shop?

19 A No.

20 Q Did you ever mention to Mr. Dalga that 100 or so  
21 barrels were emptied on the yard or down the drain?

22 A No.

23 Q Did you speak with anyone else? Any other  
24 representative of the government regarding these  
25 matters?

1 A An attorney called me.

2 Q When was this?

3 A I think it was 1992.

4 Q Do you remember when that was or approximately when  
5 the attorney called you?

6 A No. I could look in my book, my date book.

7 Q Does your date book reflect the date of the  
8 conversation?

9 A Yes.

10 Q Does it reflect any of the substance of the  
11 conversation and what you talked about?

12 A No.

13 Q It was sometime during 1992?

14 A Yes, I think so.

15 Q Do you know the name of the attorney?

16 A Yes.

17 Q What's the attorney's name?

18 A Jan Carlson.

19 Q Did you call Jan Carlson? Did you initiate this?

20 A She left a message on my answering machine.

21 Q What was that message?

22 A She'd like to talk to me.

23 Q Did she say what about?

24 A I don't remember.

25 Q Did you return her call?

1 A Yes.

2 Q Did you reach her?

3 A Yes.

4 Q What did she talk to you about?

5 A Elkhart Yard.

6 Q Do you remember what she discussed with you

7 specifically?

8 A She asked me about the tank cars, about barrels

9 being put down the drain.

10 Q When you say -- do you mean poured? The contents

11 being poured?

12 A Yeah.

13 Q Okay.

14 A Yes.

15 Q Anything else that you discussed?

16 A She -- she asked me about several things.

17 Q What'd she ask you about?

18 A About barrels being buried.

19 Q What did -- do you remember exactly what she said?

20 A No.

21 Q Okay. Could you rephrase it for me?

22 A She asked me if there was ever -- if I knew of

23 anyplace where they buried any barrels on that

24 property.

25 Q What was your response?

1 A I said no.

2 Q Did you ever mention to Bridget during your meeting  
3 that barrels had been buried at the yard?

4 A No.

5 Q Did you ever mention that to Mr. Dalga any of the  
6 times that you spoke with him?

7 A No.

8 Q That barrels had been buried?

9 A No.

10 Q And you told Janet Carlson that barrels were not  
11 buried?

12 A Not to my knowledge.

13 Q What else did she ask you?

14 A If I knew the circumstances of why tank cars were  
15 buried or about the derailment where the tank car  
16 was broken. I told her it was all hearsay. I -- I  
17 witnessed nothing.

18 Q Do you know if she recorded your conversation?

19 A She didn't indicate to me that she did.

20 Q Do you know if she took notes?

21 A I don't know.

22 Q Did she ask you about whether anyone poured the  
23 contents of barrels onto the ground at the rail  
24 yard?

25 A Openly on the ground?

1 Q Onto the ground as opposed to down a drain as you  
2 had mentioned?

3 A No. I told her where they had dumped oil.

4 Q What did you tell her?

5 A There was a -- a rack that held I think two 55  
6 gallon drums of journal oil, and it had an overflow  
7 tray built into the bottom of it, and they dumped  
8 that east of the car shop.

9 Q You said, "They dumped." Do you know who did this?

10 A No.

11 Q Do you know, were they employees of the car shop?

12 A Yes, it would have -- somebody driving the forklift  
13 would have done it.

14 Q Do you know when this happened?

15 A No.

16 Q You saw this happen?

17 A Yes.

18 Q Do you remember approximately? Can you give me a  
19 year or range?

20 A No.

21 Q Do you know -- can you give me an estimate as to  
22 the amount of -- was this journal oil?

23 A Yes.

24 Q Can you give me an estimate as to the amount of  
25 journal oil that was dumped?



1 A No. I have no idea how much it was.

2 Q Closer to 1 gallon or 100 gallons?

3 A I can't make that assumption.

4 Q What was the size of the tray, approximately?

5 A 4 foot by 3 foot by about 8 inches deep.

6 Q Was it full to the top with journal oil?

7 A I don't know.

8 Q Did you see this tray being emptied onto the ground  
9 on more than one occasion?

10 A No.

11 Q So you saw this happen once?

12 A Yes.

13 Q Do you know whether this was during the 70's or  
14 during the 80's?

15 A No.

16 Q Did -- did Janet Carlson ask you any other  
17 questions about the dumping of that overflow tray  
18 that I have not asked you here today?

19 A I corrected her in her conversation that it wasn't  
20 barrels.

21 Q What do you mean by "you corrected her"?

22 A She said barrels. I didn't.

23 Q And is that exactly what you said to Janet Carlson?

24 A Yes.

25 Q And what did she say when you corrected her?

1 A I don't remember what she -- what her response was.

2 Q Did she say barrels of journal oil?

3 A No, she just said barrels.

4 Q Did you ever tell Janet Carlson that you saw 100 or  
5 approximately 100 barrels being emptied?

6 A No, Janet Carlson said 100. I did not.

7 Q What did you say when she said that to you?

8 A I corrected her.

9 Q What did you -- how did you correct her?

10 A I told her, "I never said 100." I never said any  
11 number.

12 Q And what did she say in response?

13 A Okay, or I don't -- you know, I don't remember what  
14 her response was, but she brought it up again in  
15 the conversation.

16 Q When she brought it up again, did she say 100  
17 again?

18 A She said 100.

19 Q Did you correct her again?

20 A Yes.

21 Q What did she say then?

22 A I don't remember.

23 Q Other than this overflow tray and the two drums of  
24 journal oil, which I understand you explained to  
25 Janet that tray was emptied, did you tell her that

1 any other waste was disposed of at the yard?

2 A I don't think so. It was all hearsay.

3 Q Did you tell her about anything you had heard?

4 A Yes.

5 Q What did you tell her?

6 A About them cleaning out the fuel tanks on the  
7 engines by running them around what they called the  
8 pigtail track or the "Y" with the valve open.

9 Q Allowing the --

10 A Allowing the --

11 Q (Continuing) -- the fuel --

12 A To flow.

13 Q Did you tell her anything else?

14 A Not that I remember.

15 Q I want to direct you back to Exhibit 1, the map of  
16 the yard. If you can take my pen, which is a blue  
17 pen, where the others were in black. If you can  
18 put a letter "B" on the spot where you indicated  
19 that this overflow tray had been dumped.

20 So that is just to the right of the number 6  
21 more or less in the center of the map?

22 A Yes.

23 Q Did you describe that area to Janet Carlson?

24 A I just called it east of the car shop in an open  
25 field.

1 Q Okay. Did you describe that area to Bridget and  
2 the two gentlemen on February 13th?

3 A Yes, I think so.

4 Q Did you bring them to that spot?

5 A No, I don't think we drove down there.

6 Q And can you indicate with a letter "C" on Exhibit 1  
7 where the drain is that you had seen the employee  
8 emptying or tipping over a barrel?

9 A I'm assuming this letter 6, this is a building.

10 Q I think there's an index.

11 A Yes.

12 Q 6?

13 A But that could be the whole car shop area.

14 Q Okay. I realize it's a vague --

15 A It's right in front of the building.

16 Q "In front" meaning to the north?

17 A Directly to the north of the building.

18 Q Okay. So the letter "C" is just to the north?

19 A North.

20 Q On top of the number 6?

21 A Yeah.

22 Q Did Janet Carlson ever talk to you again after that  
23 discussion you described?

24 A Yeah, she called me another time.

25 Q How long after the first conversation?

1 A I think it was the next day.

2 Q What did she say during your second conversation?

3 A She told me she had talked to a -- I think she said

4 federal judge and that from now on our

5 conversations would have to be shared with the

6 Conrail attorneys. They would have to be present.

7 Q And what did you say in response?

8 A I told her that I have to protect myself.

9 Q What did she say?

10 A I told her. She just said, "Well, that's what has

11 to happen."

12 Q Did you discuss any of the matters that you had

13 discussed in your previous conversation about the

14 operations at the yard?

15 A No. She indicated to me she was going to send me a

16 statement to sign and I could make any corrections

17 I --

18 Q What was the statement? A statement of what?

19 A Our conversation I guess.

20 Q Your first conversation?

21 A Yes.

22 Q Did she say when she was gonna' send it?

23 A No.

24 Q Did you ever receive it?

25 A No.

1 Q Did you ever talk to her again after your second  
2 conversation?

3 A No.

4 Q I'm sorry to jump around here on you, but if we can  
5 go back to your February 13th meeting with Bridget  
6 and two gentlemen.

7 Where did you meet? Where did you first meet  
8 with them?

9 A At a Sunoco convenient store at the corner of Ash  
10 Road and 33.

11 Q How long did you stay there?

12 A One gentleman was already there, and we had to wait  
13 for Bridget and the other gentleman to arrive.

14 Q Was that meeting before your conversation, your  
15 first conversation with Janet Carlson?

16 A I think so.

17 Q So the sequence of events was you had your February  
18 13th meeting with Bridget and the two gentlemen,  
19 and then you received a call from Janet Carlson?

20 A I think so.

21 Q Did you tell Bridget and the two gentlemen or any  
22 one of them that there were 100 drums, 55 gallon  
23 drums, stored southwest of the car shop?

24 A I indicated no numbers.

25 Q What did you tell them?

1 A Just several barrels were stored in the storehouse  
2 area.  
3 Q Did you tell them how long they had been there?  
4 A No.  
5 Q Do you know how long they've been there?  
6 A No. There's always barrels there.  
7 Q At the storehouse?  
8 A Yes.  
9 Q Did you tell Bridget and the gentleman that during  
10 Conrail ownership these -- ownership of the yard,  
11 these drums were disposed of east of the car shop?  
12 A No.  
13 Q Either spilled in the field east of the car shop or  
14 buried in the field east of the car shop?  
15 A No.  
16 Q Emptied?  
17 A No.  
18 Q Did you have any discussion along those lines,  
19 similar to what I've just mentioned?  
20 A All I said was about the -- the oil.  
21 Q From the journal oil, the overflow tray?  
22 A The overflow tray.  
23 Q Did you ever leave the Sunoco station --  
24 A Yes.  
25 Q (Continuing) -- when you were there?

1                   Where did you go?

2           A       To the yard.

3           Q       I'm sorry. During your conversation with Mr. Jaffe  
4                   today I understand you talked about where you took  
5                   them so you may have gone over that, but I want to  
6                   refresh my memory.

7                   Did you take them to the spot where you said  
8                   there were several drums stored by the storehouse?

9           A       We drove by there.

10          Q       Did you point it out to them?

11          A       Yes.

12          Q       Did you go to the -- to the drain?

13          A       We drove directly west of it.

14          Q       Did you point it out to them?

15          A       I was under the impression Bridget knew where it  
16                   was at at the time.

17          Q       Why? What gave you that impression?

18          A       I have no idea. She just pointed or made an  
19                   indication that she knew where the drain was.

20          Q       Okay. Did you take them to the spot where that  
21                   overflow tray was emptied --

22          A       No.

23          Q       (Continuing) -- onto the ground?

24          A       No.

25          Q       Did you indicate where it was?



1 A Yes.

2 Q When you were at the yard did you point to it or  
3 the direction?

4 A East of the car shop.

5 Q Okay.

6 During your meeting with Bridget and the two  
7 gentlemen, did anyone take notes? Any one of you  
8 four?

9 A While we were still at the Sunoco station they had  
10 a map similar to this one.

11 Q Similar to Exhibit 1?

12 A Yes.

13 Q Okay.

14 A And I made markings.

15 Q In the same way you've done today?

16 A Yes.

17 Q Whose map was it?

18 A I don't know.

19 Q You don't know whether it was Bridget's or one of  
20 the other two?

21 A No.

22 Q Did anyone else take notes during that meeting?

23 A Not that I remember.

24 Q Was it recorded? Anyone have a tape recorder?

25 A Nobody indicated to me that they did.

1 Q Did you ever discuss with any of these government  
2 employees that we've talked about; Janet Carlson,  
3 Dennis Dalga, Bridget or the other two gentlemen;  
4 did you ever discuss the burial of drums at the  
5 rail yard?

6 A It seemed I'd been asked the question, but I have  
7 never seen any drums being buried out there.

8 MR. JAFFE: Excuse me. Just for  
9 purposes of the record, Bridget Lombardi is  
10 not an employee of the government.

11 MR. CUNNINGHAM: What is she?

12 MR. ERMILIO: She's an agent. She's an  
13 employee of EA.

14 I apologize for that.

15 MR. JAFFE: That's okay. I just want to  
16 make it clear on the record. That's fine.

17 MR. ERMILIO: If you'll just give me a  
18 second.

19 (Whereupon a pause was had in the  
20 proceedings.)

21 I have no other questions at this time.

22 MR. CUNNINGHAM: Okay, I have a few if  
23 you would like to go ahead now and go ahead  
24 or if you want to take a little time.

25 THE WITNESS: Go ahead.

1 MR. CUNNINGHAM: Okay.

2 CROSS EXAMINATION

3 BY MR. CUNNINGHAM:

4 Q I'm Pierce Cunningham, and I represent one of your  
5 former employers, Penn Central Corporation.

6 And from your testimony today, I believe you  
7 worked for Penn Central for about three or three  
8 and a half years, roughly between the period 1973  
9 until the transfer at Conrail which took place in  
10 1976. Is that correct?

11 A Yes.

12 Q So the majority of the time that you've worked at  
13 Elkhart, you've worked for Conrail, right?

14 A Yes.

15 Q I want to talk with you a minute about this tank  
16 car spill that allegedly occurred at Elkhart. And  
17 from what I gather from you today, you have no  
18 personal knowledge of that allegation whatsoever?

19 A No.

20 Q And anything that you know about that either came  
21 to you through hearsay, as you have said, or  
22 through suggestions of others. Is that right?

23 A Yes.

24 Q And as far as the dates of any such occurrence or  
25 any details with regard to the ownership of tank

1 cars or the repairs or the -- or whether or not  
2 tank cars actually were derailed, you know nothing  
3 about personally. Is that right?

4 A Are you talking about the alleged incident?

5 Q Yes.

6 A I know nothing of them personally.

7 Q And although you worked in the car shop, you never  
8 repaired a damaged tank car that was supposed to  
9 have had carbon tetrachloride in it, to your  
10 knowledge, right?

11 A Not that I know of.

12 Q So that, in substance -- so that we can get onto  
13 another subject -- other than through hearsay,  
14 there's no basis for, in your mind, the fact that  
15 this may or may not have happened. Is that right?

16 A I have no idea.

17 Q Now, let's turn for a minute to some of the  
18 questions Mr. Ermilio asked you about telephone  
19 conversations with Janet Carlson.

20 And it's my understanding that sometime in  
21 1992, without any kind of letter preceding that, a  
22 phone call was received by you from one Janet  
23 Carlson. Is that correct?

24 A Yes.

25 Q And did -- am I right that there was no previous

1 identification in writing as to who that person  
2 might have been? Is that right?

3 A No.

4 Q So for all you know, on the other end of the line  
5 it could have been anybody, right?

6 A She knew Bridget and several names.

7 Q All right. So that based on the conversation you  
8 had with Janet Carlson, you inferred that -- well,  
9 let me strike that.

10 You had had a previous meeting with Bridget  
11 Lombardi. Is that right?

12 A Yes.

13 Q And the phone call that you had with Jan Carlson,  
14 that, I guess, discussed your meeting in some ways  
15 with Bridget Lombardi?

16 A Yes.

17 Q And did Janet Carlson tell you what Bridget  
18 Lombardi had concluded as a result of your meeting  
19 in any way?

20 A No.

21 Q Okay. And the topic of that first conversation was  
22 whether or not barrels had been thrown or disposed  
23 of -- that is the contents of barrel were disposed  
24 of down a drain, whether or not tank cars were  
25 buried and whether or not barrels were buried,

1 right?

2 A Yes.

3 Q And how did the questions go? Did they go  
4 something like -- isn't it true that there was a  
5 derailment of a car, a tank car, in the mid 60's,  
6 and there was carbon tetrachloride in that tank  
7 car?

8 Is that the way the questions were phrased,  
9 sort of in a leading fashion?

10 A No.

11 Q Okay. They were not phrased that way?

12 A No.

13 Q How were they phrased?

14 A It was in a -- she gave me information, and I told  
15 her whether that is what I had said or if it was  
16 hearsay or if I had actually seen it.

17 Q Okay. And then the topic of this alleged spill  
18 came up during that telephone conversation, right?

19 A Yes.

20 Q And what facts did Janet Carlson have with regard  
21 to that alleged incident?

22 MR. ERMILIO: Which incident are you  
23 talking about?

24 MR. CUNNINGHAM: That's the derailment  
25 of the tank car.

1 MR. ERMILIO: Okay.

2 A She didn't indicate to me that she had any facts.

3 MR. JAFFE: Let me just object to the  
4 question. I don't think that he stated that  
5 the tank car was derailed.

6 BY MR. CUNNINGHAM:

7 Q I wrote down, and this could be wrong, in my notes  
8 when you gave your answers I think to Mr. Ermilio  
9 that four topics came up during the conversation;  
10 barrels down the drain, buried tank cars, barrels  
11 buried and derailment of cars.

12 A Alleged --

13 Q Tank cars.

14 A Alleged derailment of cars, yes.

15 Q That was the word, wasn't it?

16 A If you're referring to the incident where the train  
17 car was -- or the tank car was broke in half, yes.

18 Q Okay, all right.

19 Now, I guess my point of the question is to  
20 how did that topic first come up?

21 Did it come up from you, or did it come up  
22 from Janet Carlson?

23 A I think she just asked my opinion.

24 Q But you -- you didn't volunteer that information.  
25 She brought that topic up, right?

1 A I don't remember which -- which person at the time  
2 brought it up.

3 Q Had that topic come up when you met previously with  
4 Bridget Lombardi and the Indiana officials?

5 A Yes, I think so.

6 Q Okay. And at that time you told them like you told  
7 us today that it was strictly hearsay, right?

8 A It's strictly hearsay.

9 Q Now, that first telephone conversation, was that  
10 recorded or not?

11 I think maybe Mr. Ermilio asked that, but I  
12 didn't get the answer to that.

13 A She did not indicate to me that it was recorded.

14 Q But whether or not it was, you don't know?

15 A I don't know.

16 Q Now, do you know a Mr. Ted Berkshire?

17 A Yes.

18 Q Have you had any discussions with Mr. Berkshire?

19 A Over what?

20 Q Well, let me be more specific. Mr. Berkshire and  
21 Janet Carlson, likewise, had a discussion about  
22 events that took place at Elkhart?

23 A I wouldn't have known about that.

24 Q Did he mention anything to you about a call from  
25 Janet Carlson?



1 A I don't remember him saying anything about it.

2 Q Do you recall talking with Mr. Berkshire about the  
3 fact that Janet Carlson sent Mr. Berkshire  
4 following a telephone interview with him a  
5 statement, a sworn statement which statement  
6 Mr. Berkshire has testified was incorrect? Do you  
7 recall any discussion about that?

8 A I -- if we did, I don't remember.

9 Q Okay. In your discussions with Mr. Berkshire, did  
10 he tell you that he had received after the  
11 telephone call from Janet Carlson an erroneous  
12 statement which he did not sign because it was in  
13 error? Did he say anything to you about that?

14 A If he did, I don't remember it.

15 Q Okay. Do you know a Claude Brewton?

16 A No, I do not.

17 Q Do you know anything about -- from Janet Carlson  
18 whether she had talked to Mr. Brewton or  
19 Mr. Berkshire?

20 A Never heard that name.

21 Q Did Janet Carlson indicate to you that she had  
22 taken statements from Claude Brewton and Ted  
23 Berkshire?

24 A No, she didn't.

25 Q Did Janet Carlson appear to you in the questions

1 she asked you to have a desire to implicate Penn  
2 Central in any of the Elkhart events over the past  
3 20 years or so?

4 A Can you repeat that?

5 Q Yeah.

6 Was there some indication from the way in  
7 which the questions were posed to you that there  
8 was a desire on the part of Janet Carlson to  
9 implicate either Penn Central or Conrail?

10 MR. JAFFE: I'll object to that  
11 question.

12 MR. CUNNINGHAM: Okay.

13 MR. ERMILIO: What's the basis of the  
14 objection?

15 MR. JAFFE: Implicate them in what way?

16 Obviously they were involved in the  
17 Elkhart Rail Yard 20 years ago.

18 MR. CUNNINGHAM: Implicate them in the  
19 placement of hazardous materials in the  
20 ground at Elkhart.

21 A She didn't seem to be implicating anybody. It was  
22 an exchange more about fact finding type of  
23 conversation.

24 Q Okay. So she asked questions and you gave answers?

25 A And I gave the information.

1 Q Okay. What -- did the topic of Penn Central come  
2 up at all?

3 A I don't remember.

4 Q Okay. You mentioned in answer to some of  
5 Mr. Ermilio's questions the disposal of -- and I  
6 was rather unclear about this -- two drums? Is  
7 that correct or not with regard to journal oil?  
8 Maybe --

9 A The rack that is made to hold these drums usually  
10 has two drums on it.

11 Q I see.

12 Just so the record's clear, was -- was --  
13 were the barrels, did they contain anything?

14 A I don't remember if there were even barrels on it.

15 Q Okay. So, when you were talking about the rack,  
16 was there -- I don't want to put words in your  
17 mouth, and I apologize for not having listened to  
18 that testimony, but what was your recollection of  
19 those events if you don't mind going over that  
20 again?

21 A The rack?

22 Q Yes.

23 A It's just a -- a drum holder is actually what it  
24 is.

25 Q I see.

1                   So the rack was disposed of. Is that what  
2                   you were talking about?

3           A       It was just tipped over and then taken back and  
4                   reset up.

5           Q       But the drums weren't disposed of?

6           A       No, the -- I don't remember if there were drums on  
7                   it or not. But if he would have tipped it over,  
8                   they would have fell off.

9           Q       So the only disposal that you're aware of was the  
10                  occasion when you saw one of the barrels being  
11                  disposed of by somebody in the storage department?

12          A       If that's what he was doing.

13          Q       And you've indicated in Exhibit "A" that that was  
14                  put down a drain?

15          A       Yes.

16          Q       And not being that familiar with the yard, would  
17                  that be near Track 8? Is that where that is?

18          A       The drain?

19          Q       Uh huh.

20          A       What do you mean by near?

21          Q       Well, we had one previous witness testify that he  
22                  observed some disposal at or near Track 8 near the  
23                  car shop, I believe he said.

24          A       The train -- the drain would be closest to what is  
25                  called Track 4, which is under the shed in the

1 repair shop.

2 Q And this was by a storehouse employee?

3 A I believe so.

4 Q And do you -- I don't recall if you knew about what  
5 date that was?

6 A No.

7 Q Was it during Conrail ownership?

8 A I don't know.

9 Q Then I think the indication is that Janet Carlson,  
10 following the first conversation, called you again;  
11 and it may have been the next day. Is that your  
12 recollection?

13 A Yes.

14 Q And I didn't quite understand this business about a  
15 discussion with a federal judge.

16 Can you get into that for me?

17 A I believe that's what she said, she had talked to  
18 a -- I thought she said federal judge.

19 Q And did that -- did you take that as somewhat  
20 intimidating?

21 A I took the fact that at the time that -- that  
22 Conrail would be involved.

23 Q Did -- did it also suggest to you that there may be  
24 some criminal involvement on your part?

25 A No.

1 Q Okay. And the statement was that the federal judge  
2 had indicated to Janet Carlson, as you understand  
3 it, that any further conversations would have to  
4 take place in the -- in person of EPA attorneys.  
5 Is that correct?

6 A Conrail.

7 Q Conrail attorneys, okay.

8 And why -- why was that; do you know? Why  
9 did she say that?

10 A She said the judge said that --

11 Q Oh.

12 A (Continuing) -- the conversations would have to be  
13 shared with Conrail attorneys.

14 Q And in what connection did that subject come up? I  
15 mean, why -- why did she bring that up?

16 A She called to tell me that.

17 Q And the purpose of it? Do you understand it?

18 A I feared for my job.

19 Q Oh, I see. So that that was the inference that you  
20 took from it?

21 A Yes.

22 Q And were you concerned?

23 A At the time, yes.

24 Q And then was it in that conversation that the  
25 employee of the United States Government, Janet

1 Carlson, told you that a statement would be sent to  
2 you for signature?

3 A I think it was our previous conversation she said  
4 she would send the statement.

5 Q And did she say to you that in that second  
6 conversation that that conversation was being  
7 recorded?

8 A She did not indicate to me that it was being  
9 recorded.

10 Q Did she explain to you what kind of a statement it  
11 was that she was gonna' send you from the first  
12 conversation?

13 A She just said it would be a statement that she  
14 would prepare and she could send it to me through  
15 the mail and I could read it, make corrections  
16 where I wanted to and sign it.

17 Q All right. And then you never got that statement?

18 A Never got nothing.

19 Q And you don't know whether that statement would  
20 have been the result of a compilation of her  
21 written notes or whether that statement would have  
22 been an actual transcription of the entire  
23 conversation, do you?

24 A I don't know.

25 Q Because you never received it?

1 A I never received it.

2 Q Now, when you met on February 13th, 1992, at the  
3 Sunoco convenient station with the Indiana  
4 officials and perhaps one or more others from -- I  
5 guess it was the EPA. Is that right? Bridget  
6 Lombardi and --

7 A Bridget Lombardi and two gentlemen, and one  
8 indicated he was from the Indiana Department of  
9 Environment.

10 Q Did any of those people show you official badges of  
11 any kind indicating who they were?

12 A No.

13 Q Bridget Lombardi ever identify herself officially?

14 A No. They were driving their vehicles that I had  
15 seen through the yard.

16 Q Now, a deposition on the telephone was taken of  
17 Bridget Lombardi regarding her meeting with you,  
18 and I'm simply going to ask you whether or not her  
19 testimony is true or not.

20 She was asked whether 100 or so barrels were  
21 disposed of during the Conrail ownership, and she  
22 indicated that you had told her that they were. Is  
23 that true or not?

24 A I never remember mentioning any numbers to anybody.

25 Q All right. And the only knowledge you have of any



1 disposal is that one barrel. Is that right?

2 A Down the drain?

3 Q Right.

4 A Yes.

5 Q So that if she -- her sworn testimony to that  
6 effect is wrong. Is that what you're saying?

7 A I -- I haven't seen it. I don't know.

8 Q Okay. Would you like me to read it to you?

9 A I don't care.

10 MR. CUNNINGHAM: Do you mind?

11 MR. JAFFE: I don't care.

12 MR. CUNNINGHAM: Do you?

13 MR. ERMILIO: No.

14 MR. JAFFE: Before you go ahead and read  
15 this, are you reading a direct quote?

16 MR. CUNNINGHAM: Well, I will. I'm just  
17 trying to save a little time to find it.

18 Q Well, on Page 18 Bridget Lombardi was asked the  
19 question: "Did you ask Mr. Kirk if he could point  
20 out where the drums had been stored?"

21 And her answer was: "I believe so."

22 Do you recall telling Bridget Lombardi during  
23 your meeting where certain drums were stored?

24 A Yes.

25 Q And where was that?

1 A The storehouse area.

2 Q And you've marked that on the map here?

3 A No.

4 Q Would you do that?

5 A What kind of mark would you like?

6 Q Oh, whatever's good for you.

7 A It's getting awful clogged up in here.

8 Q All right. Well, maybe draw a line and an arrow  
9 down there and make a letter.

10 MR. ERMILIO: Do you want to use the  
11 letter "D?" Go up to "D?"

12 MR. CUNNINGHAM: Fine.

13 Q (Continuing) On Page 15 of the deposition,  
14 question was asked by Mr. Lambert I believe: "What  
15 did he say with respect to spilled drums?"

16 "He said that there was a group of about 100  
17 drums that had been stored on site southwest of the  
18 car shop that had been there since the time of the  
19 Penn Central ownership, and during Conrail  
20 ownership they had been disposed of east of the car  
21 shop -- spilled in a field east of the car shop."

22 Is that a true statement or not?

23 A No.

24 Q And you deny that she -- that you told her about  
25 the disposal of those drums. Is that right?

1 A I've never seen drums disposed of like that.

2 MR. CUNNINGHAM: Okay. That's all I  
3 have at this time.

4 MR. JAFFE: I just have a few more  
5 questions.

6 THE WITNESS: Okay.

7 MR. JAFFE: We are actually coming into  
8 the home stretch, believe it or not.

9 MR. ERMILIO: Winding down.

10 MR. CUNNINGHAM: Always watch out for  
11 that one.

12 REDIRECT EXAMINATION

13 BY MR. JAFFE:

14 Q The statement that was just read to you by -- by  
15 Mr. Cunningham, all right, and the -- obviously  
16 heard a lot -- repeated a lot today that certain  
17 persons have understood you or have indicated that  
18 they understood you to be telling them that  
19 multiple barrels were dumped east of the car shop  
20 during Conrail's tenure.

21 Can you think of anything during your  
22 conversations with those individuals that may have  
23 rightly or wrongly given them the impression that  
24 that was true?

25 A Just when we talked about that the oil being dumped

1 maybe they didn't understand me, because when I  
2 talked to Jan Carlson, I became very upset when she  
3 mentioned 100. I didn't -- I didn't remember  
4 saying that; and, you know, I'm sure that's not  
5 what I said.

6 Q And when you corrected her, did you correct her  
7 just as to the number, or did you correct her with  
8 regards to the -- the barrels being spilled at all?

9 A No, I told her I never said anything about 100  
10 barrels. I never indicated that the barrels were  
11 dumped. I seen one barrel going down a drain.  
12 There were several barrels at the storehouse.  
13 Where they went, I don't know.

14 Q Did you ever -- other than that one drum, did you  
15 ever see any other drums anywhere in the yard that  
16 were spilled onto the ground or into a drain?

17 A Not that were spilled. I've seen drums laying  
18 around the yard, but I -- you know, I don't know if  
19 they've been spilled or dumped or what.

20 Q Do you know if their contents were emptied in any  
21 way?

22 A I have no idea what was in them or why they were  
23 there.

24 Q Did you ever see any drums that were leaking on the  
25 yard?

1 A No.

2 Q How did the -- you talked about a rack that had  
3 a -- is it a catch drain?

4 A Yes.

5 Q That was emptied?

6 A Yes.

7 Q Where did the contents of that catch drain come  
8 from?

9 A The overflow from the -- the spigot of the 55  
10 gallon drums.

11 Q So there's a barrel above it that had a --

12 A You use an oil can, and you fill that oil can up,  
13 and there will be spillage, and then that tray  
14 catches it.

15 Q Just from people keeping it on too long or missing  
16 the spout or something like that?

17 A Yeah. It's quite a distance between the spout to  
18 the can sometimes. And when you're holding the  
19 can, it gets heavy, so you sit it down on the  
20 little rack that's made for that.

21 Q I see.

22 And those barrels always contained journal  
23 oil and nothing else?

24 A Yes.

25 Q And how do you know that it was journal oil?

1 A I used it. I just know what journal oil is.

2 Q I see.

3 Was that the only chemical that you ever saw  
4 or -- or material that you ever saw that was  
5 spilled purposefully or not purposefully on the  
6 ground?

7 A Oil?

8 Q The journal oil?

9 A Yes.

10 Q That's the only thing other than the one drum?

11 A Yes.

12 Q Okay. How was the February 13th, 1992, meeting  
13 that we've been talking about initiated? Did you  
14 initiate that, or did somebody else?

15 A I believe somebody called me and wanted to talk  
16 about a meeting.

17 Q Do you know how they got ahold of you or how they  
18 got your name?

19 A I think through the public meetings they had taken  
20 my name.

21 Q Did you say something in the public meetings which  
22 indicated that a meeting with you might yield  
23 information?

24 A I pointed out on an aerial map where the tank cars  
25 were.

1 Q Is this the meeting that you were talking about  
2 earlier with Dennis Dalga?

3 A Yes. There were several public meetings that I  
4 attended.

5 Q During these public meetings did you ever indicate  
6 that material was spilled on the ground at the  
7 Elkhart Yard?

8 A No.

9 Q During these meetings did you ever -- these public  
10 meetings did you ever indicate that 55 gallon drums  
11 of material were disposed of when Conrail took over  
12 the yard?

13 A No.

14 Q Earlier you talked about the cleaner that was used  
15 on the floor of the car shop area.

16 A Yes.

17 Q And you indicated there was a corrosive -- a label  
18 that indicated that the material was corrosive?

19 A Yeah.

20 Q Do you know when that label was on the cleaner?

21 A No.

22 Q Was it there during the 1970's?

23 A I don't remember. I just remember taking notice of  
24 it at one time.

25 Q Do you know if it was there recently?

1 A I have no idea.

2 Q You indicated most recently there was a -- that it  
3 was in a blue 55 gallon drum?

4 A The last time I've seen it, it was in a blue drum.

5 Q And do you know if the corrosive label was on the  
6 blue drum?

7 A I don't remember.

8 Q When's the last time you've worked with this  
9 cleaner?

10 A Several years.

11 Q In your second conversation with Jan Carlson you  
12 stated, "I have to protect myself," in response to  
13 her indication that she would have future  
14 conversations with you in front of Conrail's  
15 attorneys?

16 A Yes.

17 Q What did you mean by that, "I have to protect  
18 myself"?

19 A Protect my livelihood.

20 Q And what steps did you intend to take to --

21 A I didn't --

22 Q (Continuing) -- protect your livelihood?

23 A I didn't intend to take any steps, except maybe I  
24 would have to hire my own attorney to protect my  
25 rights.



1 Q What was it that you were concerned about  
2 protecting?

3 A Protecting?

4 My job.

5 Q Were you concerned that if some of the information  
6 that you were telling Jan Carlson would have put  
7 your job in jeopardy?

8 A Yes.

9 Q Why is that?

10 A A fear of the officials of Conrail.

11 Q You were afraid that they would take retribution  
12 against --

13 A Yes.

14 Q Because you were giving information which might  
15 incriminate Conrail?

16 A Yes.

17 MR. JAFFE: No further questions at this  
18 time. Thank you.

19 MR. ERMILIO: I have a couple. I'll  
20 make them quick if I can.

21 RE CROSS EXAMINATION

22 BY MR. ERMILIO:

23 Q Going back to your conversation with Janet Carlson  
24 where you mentioned you had corrected her.

25 A Yes.

1 Q When she started talking about the spilling of  
2 barrels or dumping of contents of barrels and 100  
3 barrels, if I remember right, you said earlier you  
4 corrected her more than once?

5 A Yes.

6 Q Is it possible at the end of that conversation with  
7 Janet that she still could have believed that you  
8 said 100 or approximately 100 barrels were emptied  
9 on the -- at the yard?

10 Do you think you made yourself clear enough?

11 A I thought I had. Maybe I hadn't.

12 Q You said you were angry?

13 A Yes, I became angry.

14 Q Do you remember what -- what you said when you  
15 corrected her?

16 A The second time she said it I said, "Wait a minute.  
17 I did not say 100."

18 Q And what did she say?

19 A I don't remember her response.

20 Q Mr. Jaffe asked you earlier whether you could have  
21 said anything that could have led her to believe  
22 that 100 or so were -- or that many were spilled  
23 onto the yard or whether you could have said  
24 anything that led her, Bridget, to understand or at  
25 least understand that you were saying they were

1 spilled or buried or whatever.

2 After your conversation with Janet where you  
3 corrected her a couple of times, do you think it's  
4 reasonable that she'd still understand you to have  
5 said those things?

6 A I don't know what she's thinking.

7 Q You were talking a minute ago with Mr. Jaffe about  
8 your concern about your job, possible retribution  
9 from Conrail?

10 A Yes.

11 Q As a result of that fear, have you decided not to  
12 tell any information with regard to these matters  
13 you've been asked about today?

14 A No.

15 Q Did you hold any information back from Janet  
16 Carlson in your conversation with her because of  
17 your fear?

18 A No.

19 Q Did you tell her anything that's not the truth  
20 because of your fear of losing your job?

21 A No.

22 Q How about during your conversation with Bridget and  
23 the two gentlemen during your meeting or your  
24 conversations with Dennis Dalga? Did you withhold  
25 any information from them?

1 A No.

2 Q Regarding these matters?

3 A No.

4 Q Whether because of fear of your job or otherwise,  
5 did you withholding any information?

6 A No.

7 Q Have you withheld any information today?

8 A No.

9 Q Have you altered any of the facts in any way?

10 A I don't believe so.

11 Q One final matter. The -- the journal oil rack, the  
12 rack holding the drums of journal oil, was that  
13 pure journal oil in those drums?

14 A It's called re-refined oil.

15 Q Okay. When that would drip or spill into the tray  
16 underneath that, would there be anything else that  
17 would get into that tray?

18 A Just dirt and dust.

19 Q And water?

20 A Rain water.

21 MR. ERMILIO: I have no other questions.

22 MR. CUNNINGHAM: Just a couple.

23 RECROSS EXAMINATION

24 BY MR. CUNNINGHAM:

25 Q You indicated that Janet Carlson was going to send

1           you a statement and that you never got it, but she  
2           definitely said that a statement existed. Is that  
3           right?

4           A     She told me she would make a statement, send it to  
5           me and I could correct it and sign it.

6           Q     Who has this statement now?

7           A     I have no idea.

8           Q     Mr. Arthur O. Sowski?

9           A     Osowski?

10          Q     Osowski, so it's not middle initial "O." It's  
11          Osowski?

12          A     Yes.

13          Q     Do you know how he spells it, the name?

14          A     All I -- it's -- do I know how he spells it?

15          Q     Yes.

16          A     Osowski? I don't know if it's correct or not.

17          Q     Okay. Do you know where he lives?

18          A     No.

19          Q     Is he still living?

20          A     It's under my impression Mr. Osowski, Art Osowski,  
21          is dead.

22          Q     All right. And just one more question about the  
23          alleged tank car incident.

24                   I think your testimony was that you did not  
25          know who told you about that incident?

1 A No.

2 Q In other words, who was the subject of the rumor.  
3 Is that right?

4 A No.

5 Q Okay. But your recollection of what the -- as you  
6 put it, small talk, was that it involved the  
7 replacement of a car that had been derailed; and in  
8 the process of placing it back on the track, the  
9 tank car split? Is that what it was?

10 A The -- what I was told or heard was they picked the  
11 car with what is called a coupler hitch when, in  
12 fact, on these type of cars you were to use a nylon  
13 strap around the body of the tank.

14 Q And as a result of that lifting, damage occurred to  
15 the tank. Is that --

16 A I assume, yeah.

17 MR. CUNNINGHAM: Okay, thank you.

18 MR. JAFFE: No further questions.

19 MR. ERMILIO: Believe it or not, I don't  
20 have any either.

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\_\_\_\_\_  
Gregory Kirk

SUBSCRIBED AND SWORN to before  
me this \_\_\_\_\_ day of \_\_\_\_\_,  
A.D., 1993.

\_\_\_\_\_  
Notary Public, State of Indiana  
County of Residence:  
My Commission Expires:

## CERTIFICATE

1  
2  
3 I, Teresa L. Hughes, Notary Public in and for the  
4 County of St. Joseph and State of Indiana, duly  
5 authorized to administer oaths, do hereby certify there  
6 appeared before me at the said time and place, Gregory  
7 Kirk, who was first duly sworn by me to testify the truth  
8 and nothing but the truth in response to questions  
9 propounded at the taking of the foregoing deposition.

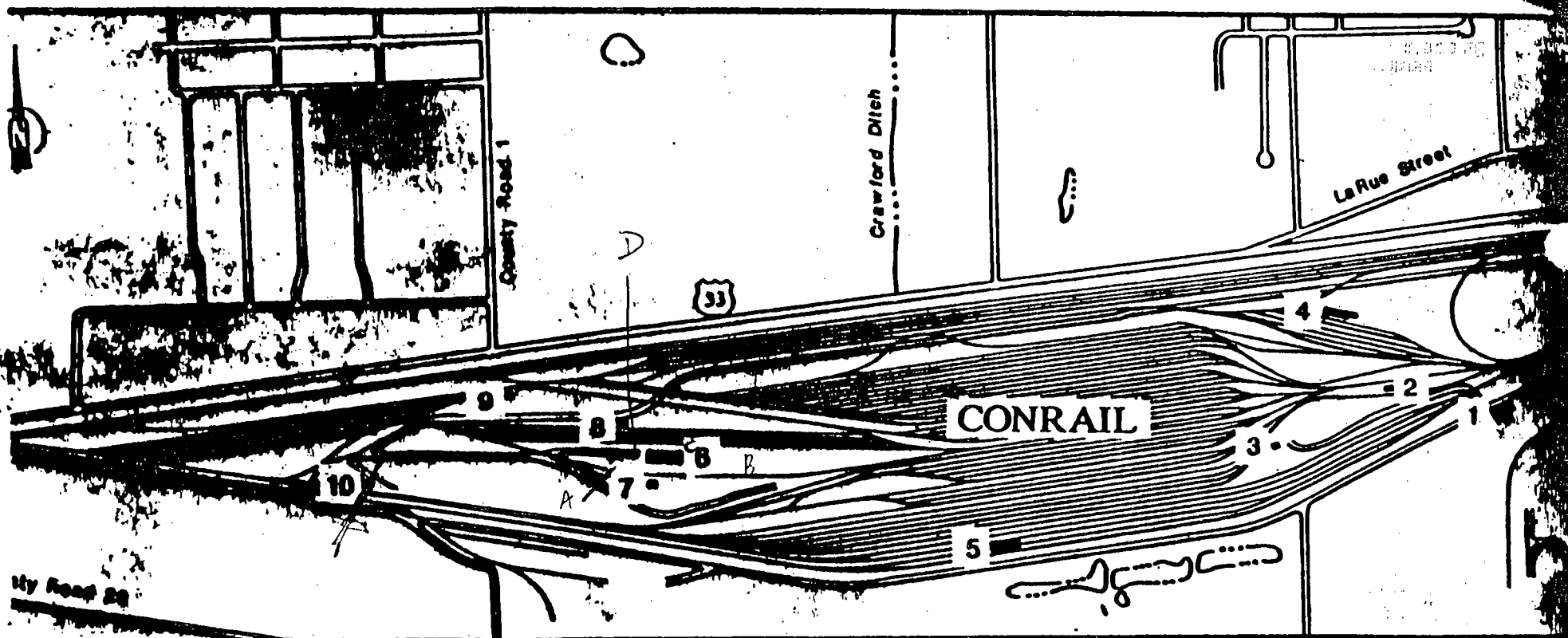
10 I further certify that I then and there reported in  
11 machine shorthand the proceedings at said time and place;  
12 that the proceedings were then reduced to typewriting  
13 from my original shorthand notes; and that the foregoing  
14 typewritten transcript is a true and accurate record  
15 thereof.

16 I further certify that the deposition was read and  
17 signed by the deponent in the presence of a duly  
18 authorized officer.

19 IN WITNESS WHEREOF, I have hereunto set my hand and  
20 affixed my notarial seal this \_\_\_\_\_ day of \_\_\_\_\_,  
21 A.D., 1993.

22  
23  
24 Teresa L. Hughes  
Notary Public, State of Indiana  
Residence: St. Joseph County  
My Commission Expires 12-3-93  
25





SCALE: 1"=1,000'



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- 9 NORTH TOWER
- 10 SOUTH TOWER

6-9-93  
Plaintiff's Exhibit  
(CRICK)